

## **Background Briefing for Webinar on NEPA & the DOE Loan Guarantee Program**

NEPA is the National Environmental Policy Act, which requires Federal agencies to assess the environmental impact of all major Federal actions significantly affecting the quality of the human environment. There are three types of review under NEPA: An environmental impact statement (EIS) is a detailed analysis of actions presumed to have significant environmental impacts, and is followed by a Record of Decision (ROD); An environmental assessment (EA) is a concise public document that briefly provides sufficient evidence and analysis for determining whether to make a Finding of No Significant Impact (FONSI) or prepare an EIS; and categorical exclusion (CX) refers to a category of actions which do not individually or cumulatively have a significant effect on the human environment and do not require an EA or EIS.

### **How the NEPA Process Works for the Loan Program**

- DOE's loan guarantees are major federal actions subject to NEPA and the NEPA review is integrated into the overall loan process. Each applicant must include an Environmental Report (ER) in its loan application that includes a description of the proposed project and its potential environmental impacts. The ER enables DOE to make a determination on the level of NEPA review required and provides initial information that DOE can use in the NEPA document. The ER should be a comprehensive description and environmental effects analysis of their proposed project, the preparation of which may require the assistance of an environmental contractor, particularly for EIS-level projects. DOE does not start its NEPA review until a decision has been made to proceed with due diligence review for a loan project, at which point DOE makes an initial determination as to the level of review. EAs for loan projects generally take 5 to 8 months to complete while EISs may run from 15 months to two years. For EAs, DOE usually works directly with the applicant or the applicant's contractor to develop the EA document. EISs are normally prepared by contractors directed by DOE and funded by the applicant.
- An EIS is required for Federal actions significantly affecting the quality of the human environment. If an EIS is not required, DOE may then prepare an EA to determine if a Finding of No Significant Impact can be made for the proposed action or if an EIS is required. Or DOE may decide that an EIS is needed without going through the EA process. In deciding on the need for an EIS, DOE considers the context and intensity of any potential impacts, including whether there are likely to be any significant environmental impacts that cannot be mitigated.
- Factors DOE may consider in determining whether to perform an EIS include the following: the project would significantly affect public health or safety; there are unique characteristics in the geographic area of the project, such as park lands, historic or cultural resources, prime farmlands, wetlands, wild and scenic rivers, or ecologically

critical areas that would be affected by the project; there is any controversy over the degree of environmental effects of the project; the project presents unique or unknown environmental risks; the project sets a precedent for future actions that are likely to have significant environmental impacts; the action is related to other actions which, taken together, could have significant cumulative impacts; the project adversely affects any sites, structures, etc., listed in or eligible for listing in the National Register of Historic Places; the project adversely affects an endangered or threatened species or its habitat that have been determined to be critical under the Endangered Species Act; the project threatens a violation of Federal, state, or local laws or requirements imposed for the protection of the environment; the project would have a disproportionate and adverse impact on minority or low-income populations.

### **Information Required from Applicants in the Environmental Report**

- The ER must include pertinent information on project location, construction, operations, and regulatory requirements, along with a description of products to be produced (e.g., solar panels, electricity, synthetic natural gas, etc.) and a description of planned facilities, production processes, including resource inputs and product and waste outputs. It is crucial to describe the area where the project will be located, including the presence of wetlands, nearby recreational and wildlife areas, critical habitat for endangered species, water and air quality, and near-by populations. The degree to which the project will require "connected actions," such as rail, pipeline or road links should be examined, as should the cumulative impact of the project in combination with other current and planned activities in the area. Current EAs and EISs on the LGPO website provide good examples of the level of detail that DOE has required to reach its NEPA determinations, and applicants are encouraged to look at these.

### **Other Environmental Laws and the NEPA Process**

- DOE considers all required environmental permitting at the local, state and Federal level in its NEPA reviews, since permit requirements are critical to assessing the environmental impact of a project. Examples typically include air, water and waste permits, zoning approvals, right-of-way requirements, toxic substances permits, etc. It is not necessary that all permits be obtained prior to submitting the loan application but information on their status should be included in the Environmental Report.

- Compliance with the Endangered Species Act should be addressed, including information obtained from the U.S. Fish and Wildlife Service (FWS) concerning potentially affected species as well as conformity with Section 106 of the National Historic Preservation Act including any surveys that were carried out and communications with the State and Tribal Historic Preservation Officers. In the course of preparing its NEPA document DOE will undertake consultation as appropriate with FWS on endangered and threatened species, including preparation of a "no effect" determination, if applicable, consultation with the State or Tribal Historic Preservation

Officer regarding compliance with the National Historic Preservation Act, the USDA Natural Resource Conservation Service regarding protection of prime farmland, the Federal Emergency Management Agency regarding floodplain issues, and the U.S. Army Corps of Engineers regarding wetland issues. All required consultation is described in the NEPA document.

### **Federal, State, and Public Review and DOE NEPA Process**

- If another Federal agency is already preparing an EA or EIS, and if the schedule permits, DOE may seek to become a cooperating agency. Under this arrangement DOE works with the other Federal agency in preparing sections of the NEPA document whenever DOE possesses special expertise or jurisdiction by law. Similarly, when DOE initiates a NEPA review for a proposed loan DOE will check to see if another Federal agency also has jurisdiction by law or special expertise concerning the project or its effects, and will consider inviting the agency to be a cooperating agency in the preparation of the NEPA document. A number of states also require environmental reviews similar to NEPA. In some cases, the state review will precede the DOE NEPA process, and DOE will be able to use the results of the state process to develop information for the EA or EIS. In other cases, DOE will work with the applicant and the state to prepare a single document that meets both state and Federal requirements. However, NEPA regulations do not allow DOE to adopt a non-Federal environmental review document.

- DOE's regulations require that EAs be reviewed by host states and Tribes for a minimum of 14 days. In some cases DOE may also want to provide EAs for public review and comment, and in all cases, will make EAs available to anyone who requests. Draft EAs will also be posted on the DOE Loan Guarantee Program Office website. For EISs, DOE will always have a scoping meeting prior to the draft EIS (DEIS) and at least one public hearing after the DEIS is issued. DEISs must have a public comment period for a minimum of 45 days. DEISs are also reviewed by the U.S. Environmental Protection Agency (EPA) and other Federal agencies, and host state and Tribal governments. EPA also reviews final EISs.